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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,426	01/27/2004	Gerald Leslie Hart	102790-105/30039	4148

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NEW YORK, NY 10022

EXAMINER

MCKANE, ELIZABETH L

ART UNIT	PAPER NUMBER
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1744

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/766,426

Applicant(s)

HART ET AL.

Examiner

Leigh McKane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

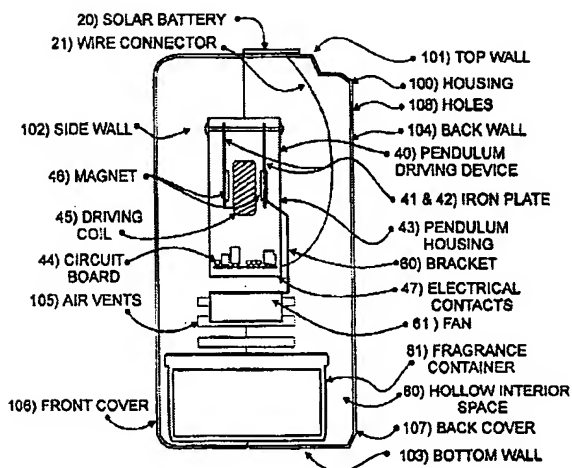
(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Lua (US 2002/0197188).

Lua teaches an apparatus adapted to disseminate volatile liquid into an atmosphere. The apparatus of Lua includes a stationary support **43**, an electromagnet **45** equipped with a power

source **20**, an electromagnet control means **44**, and a stationary support arm (shaft) extending from the stationary support (paragraph [0028]). An oscillating portion having at least one pivot arm **41,42** extending therefrom pivotally mounted upon the stationary support arm (shaft). Each pivot arm is a body portion. A permanent magnet **46** is located near the lowest region of the oscillating portion and a reservoir **81** containing a liquid air treatment material is in fluid communication with an evaporating surface (surface of the liquid).



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SIDE VIEW

Solar Powered Air Freshener Device

Fig. 1

Operation of the electromagnet control means maintains oscillatory motion of the oscillating

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portion with respect to the stationary support and dissemination of the air treatment material as a fan blade 61 attached to the oscillating portion is moved back and forth. See paragraph [0042].

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

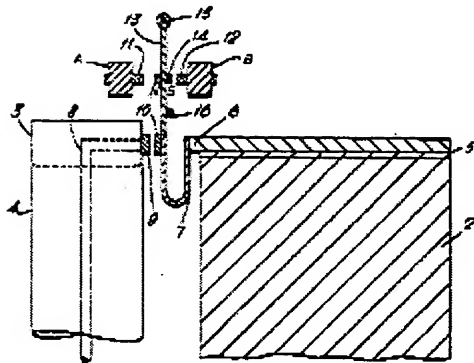
5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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6. Claims 1-4, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slade (WO 01/66158).

Slade discloses apparatus adapted to disseminate volatile liquid into an atmosphere. The apparatus of Slade includes an electromagnet **11,12,A,B** equipped with a power source (not

shown), an electromagnet control means with timing circuit (page 4, line 18 to page 5, line 5), and a stationary support arm **15** extending from a stationary support. With respect to the stationary support, although Slade does not illustrate one, it is evident that would have to be present as the support arm **15** does not have the ability to be suspended as it is in the figure without some form of support. Thus, it would have



been obvious to have a stationary support in the invention of Slade for maintaining the support arm in a horizontal position, as shown in the Figure. The apparatus of Slade further includes an oscillating portion having a pivot arm **13** extending therefrom and pivotally mounted upon the stationary support arm **15**. The pivot arm is a body portion. A permanent magnet **14** is located near the lowest region of the oscillating portion **13** and a reservoir **3** containing a liquid air treatment material is in fluid communication with an evaporating surface **2**. Operation of the electromagnet control means maintains oscillatory motion of the oscillating portion with respect to the stationary support and dissemination of the air treatment material. The dissemination apparatus further includes a primary wick **9** and a secondary wick **7**.

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7. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lua or Slade, both in view of Sheridan (US 4,016,439).

Neither Lua nor Slade disclose a power control means or switch circuit for the electromagnet. Sheridan teaches a pendulum **22** having a magnet **30** thereon and oscillated by electromagnets **34,36**. See col.2, lines 55-61. The electromagnets are driven by an electric circuit **37** and controlled by power switch **39** which controls flow of current from the battery through the electric circuit. It would have been obvious to provide a power switch for the devices of both Lua and Slade in order to turn the device on and off as desired.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Friday (5:30 am-2:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Leigh McKane
Primary Examiner
Art Unit 1744

elm
22 March 2007